

**23 CV 6522-L**

Revised 03/06 WDNV

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK****FORM TO BE USED IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
(Prisoner Complaint Form)**

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

**1. CAPTION OF ACTION**

**A. Full Name And Prisoner Number of Plaintiff:** NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. Plaintiff, Fleming Rudy

2. \_\_\_\_\_

-VS-

**B. Full Name(s) of Defendant(s)** NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. Defendant, CO. HANCZAROWSKI, Z L 4. Defendant, Sargent John Doe

2. Defendant, CO. John Doe

5. \_\_\_\_\_

3. Defendant, CO. John Doe

6. \_\_\_\_\_

**2. STATEMENT OF JURISDICTION**

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

**3. PARTIES TO THIS ACTION**

**PLAINTIFF'S INFORMATION** NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Plaintiff, Fleming Rudy Din# 07A0122

Present Place of Confinement & Address: Green Haven Correctional Facility

P.O. Box 4000

Stormville, New York 12582-4000

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_

**DEFENDANT'S INFORMATION NOTE:** To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: Defendant, HANCZAROWSKI, Z L  
 (If applicable) Official Position of Defendant: WENDE Correctional Facility Officer  
 (If applicable) Defendant is Sued in His Individual and/or \_\_\_\_\_ Official Capacity  
 Address of Defendant: WENDE Correctional Facility, Wende Rd.  
P.O. BOX 1187, Alden, New York 14004-1187

Name of Defendant: Defendant, C.O. John Doe  
 (If applicable) Official Position of Defendant: WENDE Correctional Facility Officer  
 (If applicable) Defendant is Sued in His Individual and/or \_\_\_\_\_ Official Capacity  
 Address of Defendant: WENDE Correctional Facility, Wende Rd.  
P.O. BOX 1187, Alden, New York 14004-1187

Name of Defendant: Defendant, C.O. John Doe  
 (If applicable) Official Position of Defendant: WENDE Correctional Facility Officer  
 (If applicable) Defendant is Sued in His Individual and/or \_\_\_\_\_ Official Capacity  
 Address of Defendant: WENDE Correctional Facility, Wende Rd.  
P.O. BOX 1187, Alden, New York 14004-1187

#### 4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?  
 Yes \_\_\_\_\_ No ✓

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. Court (if federal court, name the district; if state court, name the county): \_\_\_\_\_

3. Docket or Index Number: \_\_\_\_\_

4. Name of Judge to whom case was assigned: \_\_\_\_\_

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Name of Defendant: Defendant, Sargent John Doe  
(if applicable) Official Position of Defendant: WENDE  
Correctional Facility Officer

(if applicable) Defendant is sued in His Individual and/or  
Official Capacity

Address of Defendant: WeNDE Correctional Facility,  
Wende Rd. P.O. BOX 1187, Alden, New York  
14004-1187

5. The approximate date the action was filed: \_\_\_\_\_
6. What was the disposition of the case?

Is it still pending? Yes \_\_\_\_\_ No \_\_\_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

\_\_\_\_\_ Dismissed (check the box which indicates why it was dismissed):

\_\_\_\_\_ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

\_\_\_\_\_ By court for failure to exhaust administrative remedies;

\_\_\_\_\_ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

\_\_\_\_\_ By court due to your voluntary withdrawal of claim;

\_\_\_\_\_ Judgment upon motion or after trial entered for

\_\_\_\_\_ plaintiff

\_\_\_\_\_ defendant.

- B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☒ No \_\_\_\_\_

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): Fleming Rudy

Defendant(s): Defendant C.D. Mr. E. Santana

2. District Court: United STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
3. Docket Number: 18-CV-03321-VB
4. Name of District or Magistrate Judge to whom case was assigned: Judge Bricetti

5. The approximate date the action was filed: April 8, 2018/Sullivan Corr. Facility

6. What was the disposition of the case?

Is it still pending? Yes \_\_\_\_\_ No ☒

If not, give the approximate date it was resolved. I think September - October?



Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

- ☒ plaintiff
- ☐ defendant.

### 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                        |                               |
|--------------------|------------------------|-------------------------------|
| • Religion         | • Access to the Courts | • Search & Seizure            |
| • Free Speech      | • False Arrest         | • Malicious Prosecution       |
| • Due Process      | • Excessive Force      | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect   | • Right to Counsel            |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995). Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

### Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
U.S. COURTHOUSE  
1 NIAGARA SQUARE  
BUFFALO, NEW YORK 14202

COMPLAINT

1. On 8/28/20, the I.C.P., counselor was doing her rounds in the I.C.P., housing unit, asked me my name and if I was okay. I stated no, and that I was feeling stressed out and as if I was going to harm myself. The correctional officer came to the cell with the area supervisor, . . . These officials escorted me to the shower area on 30 company, where I was placed in the shower, Sgt. Baker was with the officers that escorted me.

2. Sgt. Baker stripped frisked me in the shower, without incident. Sgt. Baker saw my merry religious chain, and stated, "you can't have that, wait, is it religious?" I stated yes, it was religious. Sgt. Baker stated, "if I let you keep that, you are not going to do anything with it?" I stated, "no." I was then placed in the observation cell with my religious merry chain of my faith.

3. On 9/3/20, while I was on 30 company in the observation strip cell, an unidentified male Caucasian male came in front of my cell stating, "you are being transferred to another M.H.U. area, and he was awaiting for the area supervisor, informing me that the move was an order from the M.H.U. counselor Ms. Hill, for me to be placed in another strip cell. I was handcuffed, and escorted by the unidentified officials, and area supervisor. C.O. Hanczarowski Z L, said that when he takes the handcuffs off to place my hands on the

gate, which I complied. The officer asked me to remove my shirt and pass it back to him with one hand, which I did. An unidentified officer ordered me to remove my pants, stating, "take off the pants, hey guy you had that chain in the last cell?, you can't have that dam chain,! I stated that the chain was religious, and Sgt. Baker allowed me to keep my religious chain.

4. While my hands were on the gate, facing the wall, I heard a voice speaking in a loud harsh manner stating, "take it the fuck off!" I asked the officer why was he yelling at me as if he wants to kill me, and I requested to speak to area supervisor Sgt. Baker who was on the company three (3) cells away. I heard a voice stating, "fuck this cuff hin!" My hands were still on the gate, I was then pushed to the gate forcefully, my hands were being cuffed, and the officials began spraying me in my facial area with mace or whatever they have. My eyes were sprayed, face<sup>h</sup> ears. The officials began brutally beating me, hitting, beating me in my back, all over my body while I was in handcuffs. These officials brutally beat me until they were done. I was dragged out of the cell, carried by both arms to the nurse station where my eyes were washed out, pictures taken. I was examined by a nurse and during the examination and questioning, I was in extreme pain, feeling dizzy as I explained everything that transpired, stating that I need to go to the outside hospital. The nurse stated that I was in the hospital, just not the outside hospital, and that I was still breathing. The nurse then looked at the officials and stated, "you can take him back." I was unable to ambulate properly, requested a wheelchair, and was denied. The officials and medical made me limp back to the cell that I was assaulted in while in excruciating pain and discomfort.

5. The incarcerated individual that was housed in four (4) cell, asked me whether I was okay, I stated, 'No,' I am in pain and dizzy.' I told my neighbor that I was going to lay down, he said that he will knock on the wall and check on me later. I said okay.

6. On 9/4/20, while I was housed in the Special Housing Unit, (SHU) I wrote a grievance against the officials for assaulting me. I placed the grievance in an envelope and the officer picked up my grievance/mail. The next day, an unidentified officer came to my cell, pulled out my grievance, began reading the grievance and stated, 'we officer stick together, and if you attempt to file another grievance we will kill me. The officer walked away laughing' calling me a dumb ass nigger.

7. Couple days later I was moved from SHU to another housing unit. When the ssuperintendent was making his rounds, I stopped him explaining that I was assaulted on 9/3, and when I submitted a grievance against the officials, the officer brought the grievance to my cell threatening to kill me if I attempt to file another grievance. The superintendent stated that he would look into the matter, and for me to write him, which I did and never received a response.

8. I wrote a complaint to commissioner Annucci, Bryan Hilton, DSS in September of 2020, complaining of being brutally assaulted and threatened. I never received a response from these officials.



9. I was transferred to Clinton prison. I wrote a grievance concerning being brutally beaten at Wende prison, dated 4/11/21. I never received a response and/or grievance number and wrote to the grievance clerk in a letter dated 5/18/21, making the clerk aware that I did not receive a response and/or decision to my grievance and it was over the time limit. I received no response from the grievance clerk.

10. In a letter dated 6/16/21, I wrote to the grievance clerk once aaagain concerning not receiving a response/decision on my grievance, requesting my appeal be forward to the next level. I received no response. I wrote to Superintendent Bell dated 7/14/21, requesting his assistance, inquiring as to whether any information was received from Wende concerning the grievance against the officers at Wende that I submitted dated 4/11/21. I received no response. I wrote another letter to the superintendent in a letter dated 9/21/21, regarding my fear of being housed in the housing unit, and also complained of the assault incident at Wende prison. I never received a response to my letter.

11. I wrote a letter to the IGP supervisor Gregory concerning my grievance that I submitted dated 4/11/21. IGP supervisor Gregory responded in a memorandum dated 8/3/21, stating that there is no grievance on file written 4/11/21.

12. Due to the brutal assault I experienced excruciating pain and discomfort to my facial area, and body. My discs in my back was injured, where I was unable to ambulate and had to use a wheelchair, and continue to experience complications to my back from the assault, unnecessary, excessive use of force. I have also experienced frequent nightmares of being beaten, leaving me unable to eat, sleep, soiling myself due to the continued fear that I experienced from being beaten and threatened by the officials.

A. FIRST CLAIM: On (date of the incident)

9/3/20

defendant (give the name and position held of each defendant involved in this incident)

C.O. HANCZAROWSKI, ZL,  
C.O. John Doe, C.O. John Doe, Sargent John Doe (can not read  
their hand signatures but cosign inmate misbehavior report Tier 3).

did the following to me (briefly state what each defendant named above did):

I was escorted to the strip  
observation 3 cell, i was hand cuffed, push to the gate at the  
back of the cell and was mast in my eyes, face, ear, and back  
then beaten and punch-pounded on my neck, head, and Kicked-  
Kneed mutable times in my back causing two bulging disks  
Knox out of place suffering nerve pains everyday (see attachment  
medical records), burning eyes being fuzzy and feeling dizzy etc.  
from needing out side medical attention that i didn't get.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Eighth Amendment

The relief I am seeking for this claim is (briefly state the relief sought):

## Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim?

☒ Yes

No

If yes, what was the result?

No response from  
grievance office.

Clerk - appeal sent to C.R.L., nothing from Superintendent, only C. Gregory, →

Did you appeal that decision?

☒ Yes

No

If yes, what was the result?

No response.

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so:

A. SECOND CLAIM: On (date of the incident)

defendant (give the name and position held of each defendant involved in this incident)

did the following to me (briefly state what each defendant named above did): \_\_\_\_\_

The constitutional basis for this claim under 42 U.S.C. § 1983 is: \_\_\_\_\_

The relief I am seeking for this claim is (briefly state the relief sought): \_\_\_\_\_

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, what was the result? \_\_\_\_\_

Did you appeal that decision? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, what was the result? \_\_\_\_\_

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

If you have additional claims, use the above format and set them out on additional sheets of paper.

**6. RELIEF SOUGHT**

*Summarize the relief requested by you in each statement of claim above.*

*Plaintiff seeks one million dollars for the excessive unnecessary use of force. Two million dollars for mental anguish, pain suffering*

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

8/29/23

(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Fleming Rudy

Signature(s) of Plaintiff(s)